

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case no: 04/LM/Jan06

In The Large Merger Between:

Lexshell 668 Investments (Pty) Ltd

Acquiring Firm

And

Graspan Colliery (Pty) Ltd

Target Firm

Reasons for Decision [NON-CONFIDENTIAL]

Approval

1. On 8 March 2006 the Competition Tribunal issued a Merger Clearance Certificate approving the transaction between Lexshell 668 Investments (Pty) Ltd and Graspan Colliery (Pty) Ltd. The reasons for this decision follow.

The Transaction

2. The acquiring firm is Lexshell 668 Investments (Pty) Ltd ("Lexshell"). Glencore International AG ("Glencore") and Shanduka Resources (Pty) Ltd ("Shanduka") hold 70% and 30% respectively of Lexshell's shares. Glencore has interests in the following firms: Glencore Africa Trading (Pty) Ltd, Glencore South Africa (Pty) Ltd, Grantrade (Pty) Ltd, Microsteel (Pty) Ltd, Silicon Technology (Pty) Ltd and Xstrata Plc.¹ Shanduka has interests in the following firms: Kangra Coal (Pty) Ltd, Mondi Shanduka Newsprint, Mondi Packaging South Africa, Barberton Mines Limited, FSC Gold Exploration project with Afriore, a joint venture with African Minerals and a joint venture with the Richtersveld Community.
3. The target firm is Graspan Colliery (Pty) Ltd ("Graspan"). The shares in Graspan are held by BN Heyns, MH Heyns, JH Heyns, WE Clark and LW Dekker.
4. In terms of the sale of shares agreement, Lexshell will acquire 100% of the issued shares in and the claims on the loan account against Graspan.
5. According to the parties, the transaction introduces black economic empowerment to Graspan and allows the merged entity to take advantage of the current boom in the international commodity markets. Glencore and Shanduka believe that their combined resources will facilitate an improved exploitation of Graspan's mining rights.

¹ Although Glencore holds a 16% shareholding in Xstrata Plc, the merging parties have, for purposes of assessing the current transaction, assumed that Glencore controls Xstrata Plc, and therefore that Xstrata Plc in fact forms part of the acquiring firm. According to the parties, however, Xstrata Plc (and its South African subsidiary Xstrata South Africa (Pty) Ltd -"Xstrata") has had no involvement in the transaction and will compete with the merged entity post merger. We will accept this assumption for the same purposes.

The Merging parties' activities

6. Lexshell is a shelf company, created for the current transaction. Glencore is active in the mining, smelting, refining, processing, marketing and trading of metals and minerals, energy products and agricultural products globally. It also provides financing, logistics and other services to producers and consumers of the commodities.
7. Xstrata is primarily involved in the mining, production and sale of ferrochrome, chromite ore, vanadium pentoxide and ferrovanadium. Through Maloma Coleries Limited, Xstrata is indirectly involved in the mining and selling of anthracite. Xstrata and its subsidiary Duiker Mining (Pty) Ltd are involved in the mining and selling of steam or thermal coal as well as some metallurgical coal. Steam and metallurgical coal are types of bituminous coal. Kwa-Ndebele coal (Pty) Ltd, a subsidiary of Xstrata owns mineral rights in respect of a coal deposit.
8. Shanduka is an investment company with interests in resources, financial services, property, energy and strategic investments. Through Kangra Coal, Shanduka is involved in coal mining.
9. Graspan operates a coal mine near Middelburg in terms of a notarial mineral lease, mining both steam and metallurgical coal. The mine also produces clay.

Competition analysis

Horizontal relationship

10. According to the Commission, the parties' activities overlap in the broad market for the production of bituminous coal – more specifically in the sub markets for the production of steam coal and metallurgical coal.
11. While we are of the view that it is not necessary to make a definitive finding on the relevant market, we will accept, for these purposes, the Commission's definition of the relevant markets as being the national markets for the production of steam and metallurgical coal.
12. The merging parties provided the following market shares for 2004:²

Producer	Total coal production (%)	Steam (Thermal) coal production (%)	Metallurgical coal production (%)
Afriore	0.3	0.0	0.0
Anglo	22.3	20.1	13.0
Anker	0.4	0.4	8.2
Coastal Fuels	0.1	0.0	0.0
Elcoal	0.9	1.2	0.0
Endulwini	0.4	0.3	4.1
Eurocoal	0.1	0.0	2.4
Eyesizwe	10.7	14.8	0.0
Ilanga	0.0	0.0	0.0
Ingwe	22.3	20.4	7.1

² Sourced from the South African Coal Statistics and Marketing Manual. According to the parties, the market shares for 2005 were not available at the time of filing.

Producer	Total coal production (%)	Steam (Thermal) coal production (%)	Metallurgical coal production (%)
Kumba	8.3	8.9	28.5
Kuyasa	0.5	0.8	0.0
Mashala Resources	0.1	0.0	0.0
Northern coal	0.0	0.0	0.0
Sasol	20.7	27.6	0.0
Slater Coal	0.0	0.0	0.0
Sumo	0.3	0.0	0.0
Stuart	0.2	0.3	0.0
Total coal	1.0	0.0	11.2
Benicon-Nkomati	0.0	0.0	0.0
Halgewonnen	0.4	0.5	0.0
Imbani	0.1	0.0	0.0
Jensha-Eastside	0.4	0.3	4.6
Umlabu	0.2	0.3	0.0
Wakefield	0.8	0.8	7.3
Woestalleen	0.3	0.2	2.4
Kangra	1.2	0.7	0.0
Graspan	0.9	1.0	6.1
Xstrata	7.1	1.5	4.9
Merged Entity	8.0	2.5	11
Total	100	100	100

13. The above table reveals that the merged entity will have 2.5% of the steam coal production market and 11% of the metallurgical coal production market.
14. We agree with the Commission that the transaction does not embody significant horizontal concerns due to the fact that there are alternate sources of supply including larger players such as Anglo, Eyesizwe, Ingwe, Kumba and Sasol. Furthermore, the Commission's investigation revealed that *"customers are mostly big companies using thermal coal for generating energy and metallurgical coal for furnaces... including Haba Services, Highveld Steel and Scaw Metals...able to negotiate discounts of up to 20% of the prices for their suppliers."* The Commission and parties were also of the view that barriers to entry were low.³

Vertical relationship

15. In 2005, Graspan supplied Xstrata (and its subsidiaries) with [CONFIDENTIAL] of its thermal coal production and [CONFIDENTIAL] of its metallurgical coal.⁴

Sale of metallurgical coal

16. Xstrata's ferro-alloys business consumes metallurgical coal in its furnaces. It also purchases metallurgical coal from suppliers other than Graspan. There are many alternative sources of metallurgical coal as is evidenced from the table above. According to the parties, some local producers even export the product, although local demand has caused those exporters to

³ See page 169-170 of the record and page 7 of the Commission's report.

⁴ Page 165-168 of the record.

sell more locally. The parties further aver that Xstrata itself plans to commence mining metallurgical coal reserves of its own in approximately two years time.⁵

Sale of steam coal

17. Xstrata is a producer of steam coal but does not consume steam coal. Glencore submits that this purchase may have been to supplement Xstrata's own production of steam coal for *"the purpose of ensuring that Xstrata was able to meet all commitments it had for the supply of steam coal to its customers."*
18. Graspan has also supplied steam coal to Glencore from time to time. In 2004, Glencore purchased approximately [CONFIDENTIAL]⁶ of Graspan's thermal coal production. According to the parties, however, Glencore is not a producer or consumer of coal but rather a trader in coal. The coal purchased from Graspan was exported and on-sold in foreign markets. Glencore does not have long-term supply agreements in place with any of the South African coal producers from whom it purchases coal and most of its purchases are spot transactions or in terms of short-term (3, 6 or 12 month) supply contracts.
19. Based on the above, we are of the view that the transaction does not raise any serious vertical concerns.

Conclusion

20. There are no significant public interest issues that arise from the proposed transaction and we accordingly approve the transaction without conditions.

D Lewis

25 April 2006
Date

Concurring: M Mokuena and U Bhoola

For the merging parties: G Driver and C Roelofze (Werksmans)

For the Commission: L Khumalo (Mergers and Acquisitions)

⁵ Paragraph 6.1.5.2.4 of the parties' competitiveness report at page 167 of the record.

⁶ [CONFIDENTIAL] tons out of a total [CONFIDENTIAL] tons of thermal coal produced by Graspan in 2004 – at page 168 of the record.